



September 13, 2000

Mr. Robert E. Luna  
Law Offices of Robert E. Luna, P.C.  
Attorneys and Counselors at Law  
4411 North Central Expressway  
Dallas, Texas 75205

OR2000-3530

Dear Mr. Luna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138995.

The Clarksville Independent School District (the "district"), which you represent, received a request for all communications between the district and its law firm concerning the district high school's "coke fund" and records of expenses incurred by the district in connection with related "accusations and litigation proceedings." You contend that the requested information is excepted from disclosure pursuant to sections 552.103 and 552.107(1) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). Additionally, the governmental body must demonstrate that the litigation was pending or reasonably anticipated as of the day it received the records request. Gov't Code § 552.103(c). In this instance, you have demonstrated that the requested information "relates" to pending litigation

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<sup>1</sup>We note that the requestor is a member of the district's Board of Trustees. Because you seek to withhold the requested information under the Public Information Act, however, we assume that you have determined that the requestor does not seek the records in his official capacity but rather as a member of the general public. This ruling addresses the availability of the requested records to members of the general public under the act; it does not address, and should not be construed in any way to limit the requestor's right of access to records in his official capacity. Whether the requestor is seeking the records at issue in his official capacity is a fact question that cannot be resolved by this office. *But see* Attorney General Opinion JM-119 (1983).

which names the district as a defendant. We conclude, therefore, that the district may withhold much of the information at issue pursuant to section 552.103 of the Government Code.<sup>2</sup>

In reaching this conclusion, we assume that the opposing party in the pending litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). In this regard, we note that one document you submitted to this office consists of correspondence from the plaintiff's attorney to the district. We find no rationale for withholding this correspondence from the requestor. We have marked with a yellow flag the correspondence that must be released.

This does not, however, end our discussion as to whether the district may withhold all of the remaining records at issue. Please note that section 552.022(a) of the Government Code provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body.

....

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege.

Gov't Code § 552.022(a)(3), (16) (emphasis added). Section 552.103 is not "other law" that makes information confidential for purposes of section 552.022. Among the documents at issue are the district's accounting records pertaining to the high school's "coke fund." All

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<sup>2</sup>We note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Because we resolve your request under section 552.103, we need not address the applicability of section 552.107(1) of the Government Code. *But see* discussion *infra*.

such documentation is deemed to be public under section 552.022(a)(3) and accordingly must be released to the requestor. We have marked with yellow flags the groups of documents that must be released under section 552.022(a)(3).

You have also submitted to this office as being responsive to the request attorney billing statements. Because section 552.022(a)(16) specifically makes attorney billing statements public, except for information coming within the attorney-client privilege or other information made confidential by law, none of the information contained in those billing statements may be withheld pursuant to section 552.103. We must address, however, the extent to which those billing statements are protected by the attorney-client privilege.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and client confidences. *Id.* In Open Records Decision No. 574, this office concluded that

[i]n general, the attorney's mere documentation of calls made, meetings attended, or memos sent is not protected under [the statutory predecessor to section 552.107(1)], if no notes revealing the attorney's legal advice or the client's confidences are included. Such documentation simply does not embody attorney-client communication.

ORD No. 574 at 7. *See also* Open Records Decision No. 589 (1991). After reviewing the attorney billing statements submitted to this office, we find that none of the information contained therein constitutes either a client confidence or an attorney's legal advice or opinion. Consequently, no portion of the billing statements is excepted from public disclosure by section 552.107(1) of the Government Code, and, therefore, the billing statements must be released to the requestor in their entirety.

In summary, the district may withhold all of the information at issue pursuant to section 552.103 of the Government Code except for 1) correspondence from the plaintiff's attorney to the district, 2) the accounting records pertaining to the district high school's "coke fund," and 3) the requested attorney billing statements.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

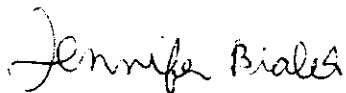
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/RWP/pr

Ref: ID# 138995

Encl. Submitted documents

cc: Mr. Russell Jones  
P.O. Box 260, FM 44  
Annona, Texas 75550  
(w/o enclosures)